

A Local Official's Guide to Labor Relations Terminology

www.ca-ilg.org/LaborRelationsGlossary

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Salary, healthcare, pensions, leaves and other employment benefits are typically viewed by employees as an important component of the compensation package they receive for their work. Employer proposals to change any of those benefits, even for new employees, are subject to state law provisions which require the public employer to notify the applicable employee organization about the changes and provide it with the opportunity to meet and confer or bargain over the proposed changes.

Listed in alphabetical order below are the key concepts relating to that process.

Agency Shop. This refers to a situation in which an employee in a *bargaining unit* must either join the employee association (union) or pay the association a fee for its services in representing the employee's interests to management. The state's *collective bargaining* law for local public agencies (*the Meyers-Milias-Brown Act* or as it is commonly known, "MMBA") specifies the procedures for creating an agency shop.¹ Agency shops provide an equitable balance between the union's interests in avoiding "free riders" (people who benefit from that part of the union's activities but do not pay for them), on the one hand, and on the other, a desire to make union membership a voluntary decision of each employee.

Arbitration. This is a method for resolving disputes by submitting the dispute to a neutral third-party (an arbitrator) who conducts an evidentiary hearing and whose decision may be final and binding or merely advisory. Typically, the public employer and the recognized employee organization split the cost of the arbitrator's fees as provided in their *collective bargaining* agreement or contract.

- **"Grievance" or "Rights" Arbitration.** This type of arbitration resolves disagreements over the interpretation and application of an existing *memorandum of understanding*.
- **"Interest" Arbitration.** This process resolves an *impasse* in negotiations and requires an arbitrator (or arbitration panel) to determine the terms for a new *memorandum of understanding*.

Note that the arbitrator's decision in *interest arbitration* may only be binding on the local agency if the agency (or its voters) have decided to give such authority to the arbitrator; state laws providing for binding *interest arbitration* have been declared unconstitutional- because they

divest local officials of their authority over budget decisions by giving that authority to a private individual.²

Bargaining Unit. This refers to a group of employees who share related skills or common interests in working conditions. This grouping or bargaining unit is then represented by a union or other public employee organization in its relationship with the public agency employer, to include *collective bargaining*. All employees holding positions represented by the bargaining unit are covered by the *memorandum of understanding* reached between the employer and employee organization, whether they are dues-paying union members or not. For California local agencies, the public agency employer determines the appropriate bargaining units within the agency.³ The agency typically has an employer-employee relations ordinance which describes the procedures to determine bargaining units, to resolve disputes over bargaining unit formation and to establish bargaining unit representation. The public agency typically creates these procedures after consulting in *good faith* with the representatives of a recognized employee organization.⁴ Related concept: *meet and confer*

Closed Session. California's open meeting laws allow a local agency governing body to meet in closed session to provide instructions to the agency's bargaining representatives.⁵ These sessions may take place both before and during negotiations.⁶ The instructions can include parameters on salaries, benefits and working conditions.⁷ Discussions on funding priorities and available funds may occur, but only insofar as is necessary to instruct the agency's bargaining representatives.⁸ The theory of allowing these discussions to occur in closed as opposed to open session is to enable the agency to avoid revealing the agency's bargaining parameters to bargaining unit representatives. These closed sessions help agency leaders to communicate with their bargaining representatives in confidence in an effort to obtain the best deal possible for taxpayers.⁹ Related concept: *confidentiality*.

Collective Bargaining. This is the negotiation process that occurs between an employer and a *bargaining unit* where the parties try in *good faith* to reach agreement on wages, hours, benefits and other terms and conditions of employment. A union or other labor organization typically represents a *bargaining unit* in the collective bargaining process with the public agency employer. The parties can collectively bargain over such issues as salaries, benefits, vacation time, work hours, safety conditions and grievance procedures. The goal of the collective bargaining process is for the parties to reach an agreement on the terms and conditions of employment and to memorialize them in a "*memorandum of understanding*."¹⁰ Collective bargaining by local public entities is governed by state statutory laws and administrative agency (Public Employment Relations Board or PERB) regulations and judicial decisions. Related concepts: *bargaining unit* and *good faith*.

Confidentiality. Disclosing confidential information shared in *closed session* relating to the public agency's *collective bargaining* parameters or strategies violates the state's open meeting laws.¹¹ Any decision to disclose confidential information must be a group decision, not an individual one.¹² For more information, see http://www.ca-ilg.org/closed_session_leaks. Related concept: *transparency*.

Concession Bargaining. This form of bargaining, also referred to as “take back” bargaining, refers to a situation in which a public agency finds itself unable to maintain the same level of staffing, wages and/or benefits (or other terms and conditions of employment) for its *bargaining units* typically due to budget problems. One of the agency’s options is to negotiate concessions with its bargaining units to reduce costs in order to achieve a balanced budget. This contrasts with bargaining sessions in which *bargaining units* enter into negotiations seeking enhancements to salaries, benefit packages, staffing levels and such. Critical elements to the success of concession bargaining include agency *transparency* in terms of its financial situation, trust in the accuracy of the financial information it shares with the public employee organization, and clarity on the agency’s labor relations objectives.¹³

Elected Official Role in Collective Bargaining. Typically, the most effective role elected officials can play in the labor relations process is to set key financial and other parameters for the negotiating team that indicate what kind of final agreement the governing body will be willing to approve at the end of the negotiating process.¹⁴ Financial parameters include salary and benefit costs, but also costs associated with operational changes that may be proposed in the course of discussions. By setting parameters, as opposed to specific positions or strategies, the governing body provides its bargaining representatives with the flexibility necessary to engage in the give and take characteristic of the bargaining process. Related concepts: *closed session* and *confidentiality*.

Employee-Employer Relations Resolution. A local public agency may adopt rules that will guide its labor relations activities; as with other activities, the agency must consult in *good faith* with employee organizations before finalizing its rules.¹⁵ State law offers a list of issues that can be addressed through such rules.¹⁶

Good Faith. The law requires local agencies to genuinely try to reach an agreement with employee organizations prior to making a decision.¹⁷ This involves approaching conversations with an authentic desire “to resolve differences and reach a common ground,”¹⁸ as opposed to a “resolve not to budge from an initial position.”¹⁹

Impasse. Despite everyone’s *good faith* efforts, there can come a point in negotiations in which one or both parties determine that their differences are so substantial or discussions so prolonged that future meetings would be futile.²⁰ If this occurs, a local agency can implement the impasse resolution procedures specified in its *employer-employee relations resolution*. After exhaustion of the impasse resolution procedures, agencies not subject to *interest arbitration* may implement the agency’s last, best and final offer.²¹

Mediation. A method of resolving *impasse* in which a mutually agreed upon third-party (a mediator) assists the parties in identifying areas of shared interest and facilitating agreement. Mediation costs are shared with the public agency paying half and the recognized employee organization(s) paying half.²² In mediation, the mediator acts as a facilitator in helping the parties resolve their differences. Typically, mediation is not final and binding nor does it require an evidentiary hearing. Alternatively, in *interest arbitration*, the arbitrator (or arbitration panel)

acts as a decision-maker and resolves disputed issues pertaining to wages, hours and other terms and conditions of employment.

Meet and Confer. Public agency management and employee representatives have a mutual obligation to bargain in *good faith* to reach agreement on issues relating to wages (including pensions and other post-employment benefits), hours and other terms and conditions of employment (sometimes referred to as “the *scope of representation*”).²³ The obligation to meet and confer does not extend to issues relating to the merits, necessity, or organization of a particular public service activity, except to the extent that any proposed changes impact wages, hours or other terms and conditions of employment.²⁴

Memorandum of Understanding (MOU). Also referred to as a contract or a *collective bargaining* agreement, this is a written agreement between the local public agency and the recognized employee organization setting forth the wages, hours, and other terms and conditions of employment for the organization’s *bargaining unit* members, for a stated period of time, as *collectively bargained* by the parties.²⁵ In addition to ratification by the employee organization, the MOU must be approved by the governing body to be binding.²⁶

Meyers-Milias-Brown Act. This is the state law²⁷ that provides a framework for resolving labor issues (such as wages, hours and other terms and conditions of employment) between local public agencies and public employee organizations. It is sometimes referred to as the “MMBA.” The law recognizes the right of public employees to join labor organizations of their own choice and be represented by those organizations in their employment relationships with public agencies.²⁸ The MMBA covers cities, counties, and special districts but does not cover public school districts, community colleges, the University of California, the State University system or the State of California.²⁹

Scope of Representation. The “scope of representation” refers to all matters relating to employment conditions and employer/employee relations, including, but not limited to, wages, hours, pensions, benefits and other terms and conditions of employment.³⁰ It does not include consideration of the merits, necessity or organization of any service or activity provided by law or executive order.³¹

Transparency. The state’s open meeting laws generally balance the values of transparency and *confidentiality* in regards to *closed sessions*. One way this is done is through the requirement that the governing body of a public agency describe the nature of a particular *closed session* item on its agenda.³² In this context, the *closed session* agenda item usually makes the public aware of the fact that instructions are being given to the agency’s labor negotiators in *closed session* and provides the public the opportunity to offer their thoughts prior to the governing body’s *closed session*.³³ The governing body of the public agency must report any action taken in *closed session*, and once labor negotiations are completed, approval of an agreement concluding labor negotiations with represented employees shall be reported once the agreement is final and has been accepted or ratified by the other party.³⁴

The governing body can choose to publicly disclose more than the legally specified amount of information required under the open meeting laws, but it can never provide less information. Another element of transparency is the fact that public agency salaries and benefits are generally considered public records, as are contracts between public agencies and employees.³⁵ Public records law requires agencies to disclose records upon request. Given the recent public interest in public agency salaries and benefit packages, one policy and transparency issue for local agencies to consider is to make public records readily available (for example, through the agency's website) without waiting for a public records request.

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The Institute welcomes feedback on this resource:

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Endnotes, References and Resources for Further Information

¹ Cal. Gov't Code §§ 3502.5.

² See Cal. Civ. Proc. Code § 1299 and following, declared unconstitutional in *County of Riverside v. Superior Court*, 30 Cal.4th 278 (2003); *County of Sonoma v. Superior Court*, 173 Cal.App.4th 322 (2009).

³ *Covina-Azusa Fire Fighters Union, Local 2415 v. City of Azusa*, 81 Cal. App. 3d 48, 59 (1978).

⁴ Cal. Gov't Code §§ 3507.

⁵ Cal. Gov't Code § 54957.6(a) ("Closed sessions of a legislative body of a local agency, as permitted in this section, shall be for the purpose of reviewing its position and instructing the local agency's designated Representatives.")

⁶ Cal. Gov't Code § 54957.6(a) ("Closed sessions, as permitted in this section, may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees.")

⁷ Cal. Gov't Code § 54957.6(a) ("Notwithstanding any other provision of law, a legislative body of a local agency may hold closed sessions with the local agency's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily provided scope of representation.")

⁸ Cal. Gov't Code § 54957.6(a) ("Closed sessions with the local agency's designated representative regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits may include discussion of an agency's available funds and funding priorities, but only insofar as these discussions relate to providing instructions to the local agency's designated representative.")

⁹ See *Sacramento Newspaper Guild v. Sacramento County Board of Supervisors*, 263 Cal. App. 2d 41, 46 (1968) (noting in the context of settlement discussions that "If the public's 'right to know' compelled admission of an audience, the ringside seats would be occupied by the government's adversary, delighted to capitalize on every revelation of weakness.").

¹⁰ See Cal. Gov't Code § 3505.1.

¹¹ See Cal. Gov't Code § 54963.

¹² See Cal. Gov't Code § 54963(a) ("A person may not disclose confidential information that has been acquired by being present in a closed session ... to a person not entitled to receive it, *unless the legislative body authorizes disclosure of that confidential information.*" emphasis added).

¹³ For example, the County of Ventura has supplemented its overall mission, values and goals statements with an application of those principles to its labor relations activities. The result is a specific vision, mission and set of labor relations principles adopted by the governing board that guided the county's negotiations and articulated goals and principles with which bargaining units could agree.

¹⁴ For more insights on the role of elected officials in the bargaining process, see <http://www.mml.org/pdf/hmo/14.pdf> (Handbook for Municipal Officials, published by the Michigan Municipal League, 2004—Labor Relations)

<http://www.awcnet.org/Portals/0/Documents/Training/Materials/Conference/CouncilRoleLaborNegotiationsHandout.pdf> (The Council's Role in Labor Negotiations, Association of Washington Cities, Conference Paper, June 2010).

¹⁵ Cal. Gov't Code § 3507(a) ("A public agency may adopt reasonable rules and regulations after consultation in good faith with representatives of a recognized employee organization or organizations for the administration of employer-employee relations under this chapter.")

¹⁶ Cal. Gov't Code § 3507(a) ("The rules and regulations may include provisions for all of the following:

- (1) Verifying that an organization does in fact represent employees of the public agency.
- (2) Verifying the official status of employee organization officers and representatives.
- (3) Recognition of employee organizations.
- (4) Exclusive recognition of employee organizations formally recognized pursuant to a vote of the employees of the agency or an appropriate unit thereof, subject to the right of an employee to represent himself or herself as provided in Section 3502.
- (5) Additional procedures for the resolution of disputes involving wages, hours and other terms and conditions of employment.
- (6) Access of employee organization officers and representatives to work locations.

(7) Use of official bulletin boards and other means of communication by employee organizations.

(8) Furnishing nonconfidential information pertaining to employment relations to employee organizations.

(9) Any other matters that are necessary to carry out the purposes of this chapter.”)

¹⁷ See Cal. Gov’t Code § 3505.

¹⁸ *Placentia Fire Fighters v. City of Placentia*, 57 Cal. App. 3d 9, 25 (1976).

¹⁹ *Placentia Fire Fighters*, at 25.

²⁰ Cal. Gov’t Code § 3540(f).

²¹ Cal. Gov’t Code § 3505.4.

²² Cal. Gov’t Code § 3505.2.

²³ Cal. Gov’t Code §§ 3505.

²⁴ See *Berkeley Police Association v. City of Berkeley*, 76 Cal. App. 3d 931 (1977).

²⁵ Cal. Gov’t Code § 3505.1.

²⁶ *Valencia v. County of Sonoma*, 158 Cal. App. 4th 644 (2007).

²⁷ Cal. Gov’t Code §§ 3500-3511.

²⁸ Cal. Gov’t Code §§ 3500-3503, 3505.

²⁹ Cal. Gov’t Code § 3501(c)-(d), 3501.5. See Cal. Educ. Code § 88000.

³⁰ Cal. Gov’t Code §§ 3504.

³¹ See *Berkeley Police Association v. City of Berkeley*, 76 Cal. App. 3d 931 (1977).

³² See Cal. Gov’t Code §§ 54954.2, 54956. See also Cal. Gov’t Code § 54954.5 (“safe harbor” closed session agenda descriptions).

³³ See Cal. Gov’t Code §§ 54954.3(a).

³⁴ See Cal. Gov’t Code §§ 54957.1(a)(6) Approval of an agreement concluding labor negotiations with represented employees pursuant to Section 54957.6 shall be reported after the agreement is final and has been accepted or ratified by the other party. The report shall identify the item approved and the other party or parties to the negotiation.”)

³⁵ See Cal. Gov’t Code § 6254.8 (“Every employment contract between a state or local agency and any public official or public employee is a public record which is not subject to the provisions of Sections 6254 [specific exceptions to records disclosure requirements] and 6255 [general exception/balancing test]”). See also *International Federation of Professional and Technical Engineers, Local 21, AFL-CIO v. Superior Court*, 42 Cal. 4th 319 (2007) (finding no basis to withhold records relating to request to disclose names and salaries of public employees earning \$100,000 or more each year). See also *League of California Cities, The People’s Business: Guide to the Public Records Act*, 2008 at 29 and 30 (available at [http://www.cacities.org/resource_files/newCybrary/2008/legalresource/26872.PRA_08%20\(2\)_web.pdf](http://www.cacities.org/resource_files/newCybrary/2008/legalresource/26872.PRA_08%20(2)_web.pdf)).